IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

WP(C).No. 28898 of 2006(M)

PETITIONER:

M. PRABHAKRA RAJA, `SRINIDHI',
HARISREE NAGAR, AYYANTHOLE P.O.,
TRICHUR-3.

BY ADV. SRI.P.VIJAYAKUMAR

RESPONDENTS:
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1. PRINCIPAL SECRETARY, LOCAL SELF GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM.

2. CHIEF TOWN PLANNER, THIRUVANANTHAPURAM.

3. TRIPUNITHURA MUNICIPALITY REPRESENTED BY SECRETARY, TRIPUNITHURA.

BY ADV. SRI.V.M.KURIAN
GOVERNMENT PLEADER SRI.MATHEW G. VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/01/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.28898/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE APPLICATION FOR EXEMTPION SUBMITTED BY PETITIONER.

EXT.P2: TRUE COPY OF THE REPORT DATED 24/3/06 SUBMITTED BY THE SENIOR TOWN PLANNER, ERNAKULAM.

EXT.P3: TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.10967/06 BEFORE THE HON'BLE HIGH COURT OF KERALA.

EXT.P4: TRUE COPY OF THE ORDER NO.D2/2813/06/D.DIS.DATED 20.4.06 ISSUED BY THE 2ND RESPONDENT.

EXT.P5: TRUE COPY OF THE RECEIPT DATED 16.6.06 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT.

EXT.P6: TRUE COPY OF THE GENERAL CIRCULAR DATED 12/6/06.

EXT.P7: TRUE COPY OF THE NOTICE DATED 17/6/06.

EXT.P8: TRUE COPY OF THE REPRESENTATION DATED 13/10/06 SUBMITTED BY THE PETITIONER BEFORE RESPONDENTS 1 AND 2.

//TRUE COPY//

P.A. TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28898 OF 2006

Dated this the 31st day of January, 2007

JUDGMENT

The petitioner is the husband of Smt.Krishnakumari Thampuratti, a member of the Cochin Royal family. The 1st respondent in this Writ Petition is the Principal Secretary, Local Self Government Department, 2nd respondent is the Chief Town Planner and the 3rd respondent is the Tripunithura Municipality.

2. According to the petitioner, his wife, her mother, sisters and their children all together 17 persons, members of the Kochi Royal Family are together in ownership of 70 cents of residential compound in Survey No.1502,1503 and 1504 of Nadama Village within the area of the 3rd respondent Municipality as per a registered partition deed. There stood a dilapidated structure in the property which was demolished. Considering the interest of all the members of the family it was decided to develop a flat complex in the property and accordingly an agreement was arrived at by the owners with a builder group by name M/s. Lotus Builders for development and marketing of a flat complex which was to match architecturally, with the great heritage and culture of the area. Pursuant to the agreement a plan for a flat complex of 76 flats with ground plus 14 floors was got prepared spending huge

amounts. As the Floor Area Ratio as per the total plan was 1 :3.76. The Municipality could issue permit only in respect of 5 flats and therefore the petitioner was authorized by all the co-owners to apply to the Government for relaxation of the FAR norms to construct ground floor plus 14 floors flat complex. Ext.P1 is the copy of the application for exemption submitted in this regard. The request of the petitioner was considered by the 1st respondent and later forwarded through the 2nd respondent to the Senior Town Planner, Ernakulam, who inspected the premises and submitted Ext.P2 report recommending that the permit may be given subject to further conditions referred to in the report. In the meanwhile, in view of the delay in taking a decision on the petitioner's request for relaxation, the petitioner approached this Court by filing a writ petition which was disposed of by this Court by passing Ext.P3 judgment directing the 2nd respondent Senior Chief Town Planner to take an early decision on Ext.P1 within one month. Pursuant to the directions in Ext.P3, respondents 1 & 2 expedited the matter and finally by order dt.20.4.06 concurrence was granted for relaxation in FAR norms permitting the co-owners to construct ground plus 14 floors as requested by them. Petitioner was required to take necessary building permit from the 2nd respondent and Ext.P4 is the copy of the order issued by the Chief Town Planner in that regard. Pursuant to Ext.P4 the petitioner was directed to remit necessary permit fee and accordingly the petitioner remitted the entire building permit fee of Rs.22,61,940/-

with the 3rd respondent Municipality. Ext.P5 is copy of the receipt issued by the 3rd respondent on 16.6.06. The petitioner submits that the 1st respondent had issued certain non-specific directions to the 2nd respondent to keep in abeyance the requests for relaxation of FAR and based on the said directions, the 2nd respondent had issued a Circular of a general nature to all the Municipalities and Corporations directing to keep in abeyance the orders issued for change of land use during the year 2006 which was allegedly procured misinterpreting the court orders. Ext.P6 is copy of that general circular dt.12.6.06 and based on Ext.P6 the 3rd respondent Municipality has issued Ext.P7 notice to the petitioner informing the petitioner that though the plan and permit are already sanctioned to the petitioner, the same cannot be operated until further directions. The petitioner points out that reference to Ext.P6 will show that the same does not specifically refer to the relaxation already given to the petitioner. Ext.P6 does not relate to cases where building permits have been sanctioned but only relates to cases of change of zone or land use based on a misinterpretation of court orders. In the instant case, the Municipality has already sanctioned building permit and plan pursuant to relaxation permitted by respondents 1 & 2. Ext.P6 will reveal the decision therein to give relaxation taking into account all the relevant materials including the report of the Senior Town Planner. In the instant case no question of change of zone of land use is involved. Residential apartments are sought to be constructed in residential

areas. Under the above circumstances, the petitioners submitted representations before respondents 1 & 2 requesting that necessary clarification orders be issued to the 3rd respondent to enable the petitioner to commence construction work. Ext.P8 is copy of the said representation. Making the above averments and impugning the refusal of the Municipality to issue permit in spite of receiving permit fee on various grounds, the Writ Petitioner prays for the following reliefs:

1. issue a writ of certiorari to quash Ext.P7;
2. declare that Ext.P7 circular issued by the 2nd respondent and the related decision of the Government dt.7.6.06 shall not affect the relaxation already offered on the petitioner's request for permit submitted on behalf of co-owners for construction of ground plus 14 floors in their property in Survey Nos.1502, 1503 and 1504 of Nadama Village, Ernakulam District ;
3. issue a writ of mandamus commanding the 3rd respondent to hand over the permit and plan in favour of the petitioner pursuant to the permit fee received by the 3rd respondent under Ext.P5.

3. None of the respondents have filed counter affidavits or statements in this case. However, noticing the apparent connection between this case and WP(c) No.25478/06 which is being disposed of today by separate judgment, arguments in this case was also heard along with WP(C) No.25478/06. Sri.P. Vijaya Kumar while endorsing all the submissions which were addressed by Sri.P.R. Ramachandra Menon for the petitioner in WP(C) No.25478/06 would submit that his

petitioner has a still stronger case for grant of relief. The stand presently taken by the 3rd respondent-Municipality in refusing to issue the building permit which is already sanctioned is patently illegal. A substantial amount of more than Rs.22 lakhs was already remitted by the petitioner to the 3rd respondent-Municipality as building fee for grant of licence and it is not now open to the 2nd respondent to withheld or suspend the permit on account of the illegal stand of the 3rd respondent. The entire project has come to a standstill and owners of the property whom the petitioner represents are being put to huge loss. Ext.P6 communication of the 2nd respondent has been issued in a general manner in respect of all the constructions under different Municipalities and Corporations in Kerala, on the basis of the change in land use allowed earlier by misinterpreting certain court orders. Ext.P6 cannot have any application in the petitioner's case where no question of change of land use is involved. In the petitioner's case on the basis of the inspection report submitted by the Senior Town Planner, Ernakulam recommending for issuance of permit by relaxing FAR norms, Ext.P4 was issued by the 2nd respondent as early as on 20.4.04 and that too in compliance with the directions in Ext.P3 judgment of this Court. There is no justification at all for interfering with continuance of the construction work by the petitioner. Sri. K.K. Ravindranath, learned senior Government Pleader and Liaison Officer would submit that though the case of the petitioner would look harder than that of the

petitioners in the connected cases, the essential issue is whether the Government or any other authority has the power to grant relaxation from the provisions contained in a duly sanctioned and notified town planning scheme, that issue having been answered by the judgment of this Court in OP No.8740/97. However, hard the case of the petitioner may be, the 3rd respondent cannot be permitted to issue building permit to the petitioner permitting construction violating the Floor Area Ratio permitted under the structure plan.

4. In my judgment in WP(C) No.25478/06, I have noticed that there is considerable force in the argument of the petitioner therein that as far as the FAR is concerned it is the Kerala Municipality Building Rules which shall prevail and not the structure plan of 1991. I have also observed in that judgment that the judgment of this Court in OP No.8740/97(which significantly is the judgment referred to as item No.1 in Ext.P6 Circular) does not relate specifically to the issue of FAR. The same relates to the power of the Government to grant exemption from zoning regulations as notified in Town Planning Scheme. Those observations will apply to this case also. Ext.P6 as rightly contended by Sri.Vijaya Kumar is a general Circular issued by the Chief own Planner to the various Municipalities and Corporations directing to keep in abeyance orders issued for change of land use during the year 2006 allegedly misinterpreting court orders. Ext.P4 in this case has been passed pursuant to the direction issued by this Court in Ext.P3 judgment

and the learned senior Government Pleader and Liaison Officer would fairly concede that Ext.P4 is not the result of any misinterpretation of the directions in Ext.P3. Those directions I have already noticed were only for taking an early decision. Ext.P4 was in fact issued on the basis of Ext.P2 report of the Senior Town Planner, Ernakulam prepared by him after a detailed inspection of the site. Ext.P4 is issued subject to the conditions incorporated therein and the Municipality would act upon Ext.P4 and would make the petitioner to remit a sum of Rs.22,61,940/- as building fee against Ext.P5 receipt. It is after having approved the plan submitted by the petitioner and sanctioned the issuance of permit the Municipality issued Ext.P7 on 17.6.06 expressing its inability to issue the sanctioned permit. The averments regarding the hardships and inconveniences to which the petitioner's principals, the co-owners of the plot, upon which the flat complex is proposed to be constructed by them remains uncontroverted. Nobody has contended before me that Ext.P4 issued by the 2nd respondent was not issued duly or that the same is tainted in any manner. It was acting on Ext.P4 that the 3rd respondent directed the petitioner to remit a very substantial amount by way of building fees and acting on Ext.P4 and the expectations which were aroused in the mind of the petitioner's principals by the 3rd respondent-Municipality, the petitioner's principals have already entered into allotment agreements with several prospective buyers of the flats to be constructed. This aspect of the matter is also not disputed. The

observations of the Supreme Court in its judgment in **Express Newspapers Pvt. Ltd v. Union of India** [1986 (1) SCC 133] in paragraphs 178 and 179 in the context of principles of estoppel will apply in this case. I am therefore inclined to grant relief to the petitioner. The Writ Petition accordingly will stand allowed and there will be a declaration that Ext.P6 Circular will not apply to the plan and permit already sanctioned by the 3rd respondent-Municipality in favour of the petitioner. There will be a direction to the 3rd respondent to hand over the approved plan and building permit, pursuant to the permit fee received from the petitioner against Ext.P5 receipt, to the petitioner within three weeks of receiving copy of this judgment.

The Writ Petition is allowed as above. No costs.

PIUS C. KURIAKOSE, JUDGE

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